IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13728 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

HINUSBBHAI RAHIMBHAI KHARANJIYA - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR JS BRAHMBHATT for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 03/08/2005

ORAL JUDGMENT

1) Rule. Shri J.S.Brambhatt, learned advocate waives service of rule on behalf of the respondent. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2) In this petition under Article 226 and 227 of the Constitution of India, the petitioner GSRTC has challenged the legality and validity of the order passed by the Industrial Tribunal, Vadodara dated 22nd February, 2005 passed in Approval Application No.55 of 1998 in Reference (IT) No.117 of 1995, by which, the Industrial Tribunal has rejected the application submitted by the petitioner corporation for granting approval to the order of dismissal passed by the disciplinary authority under Section-33-2-(B) of the Industrial Disputes Act.

3) It appears from the record that one dispute between the parties was pending before the Labour Court / Industrial Tribunal being Reference (IT) No.117 of 1995. During the pendency of the said reference, it was alleged that the respondent workman was absent without getting leave sanctioned for the period between 24.6.1997 to 26.8.1997 and thereafter, continued to be on leave till the chargesheet and also upto order of dismissal dated 22.4.1998. After departmental inquiry, an order came to be passed on 22.4.1998 passed by the Disciplinary Authority dismissing the respondent workman from service on the ground of absentism without getting the leave sanctioned. As reference was pending being Reference No.117 of 1995, the petitioner

corporation submitted an application for getting approval as required under Section-33(2)(b) of the Industrial Disputes Act and the application was submitted being Approval Application No.55 of 1998. On appreciation of evidence, the Tribunal held that departmental inquiry was illegal and was in breach of principles of natural justice and also, considering the fact that one month wages as required under Section-33(2)(b) of the I.D.Act was not paid, there was breach of Section-33-(2)(B) of the Industrial Disputes Act, and therefore, dismissed the approval application by order dated 22.2.2005. It is required to be noted that the petitioner corporation has already submitted an application that in case the Industrial Tribunal holds that the departmental inquiry is illegal, in that case, they may be permitted to lead evidence and to prove the charge against the respondent workman before the Industrial Tribunal. Being aggrieved and dissatisfied with the order passed by the Industrial Tribunal, Vadodara dated 22.2.2005 passed in Approval Application NO.55 of 1998, the petitioner corporation has preferred the present special civil application under Article 226 and 227 of the Constitution of India.

4) Shri Hardik C. Rawal, learned advocate appearing on behalf of the petitioner corporation has relied upon the judgment and order passed by

the learned Single Judge of this Court dated 8.7.2004 rendered in Special Civil Application No.10011 of 1999 by which the learned Single Judge of this Court in an identical petition involving similar controversy, has remanded the matter to the Labour Court / Industrial Tribunal giving an opportunity to the petitioner corporation to lead evidence to prove the charge before the Industrial Tribunal. However, in the facts and circumstances of the case, more particularly, in view of the fact that the order of dismissal is dated 22.2.1998 and the approval application was submitted in the year 1998 which came to be dismissed in the year 2005, again, to go before the Industrial Tribunal and to prove the charge against the respondent workman will be time consuming and therefore, learned advocate appearing on behalf of the petitioner has submitted that an appropriate order be passed by this Court inflicting an appropriate punishment on the respondent workman considering the charge and the allegations leveled against him.

5) Shri J.S.Brambhatt, learned advocate appearing on behalf of the respondent workman has opposed the present special civil application, however, has accepted submission and the request made on behalf of the petitioner corporation with regard to imposition of some punishment by this Court and further stated that the same will be agreeable to the

concerned workman respondent. Both the learned advocates have submitted that so far as the backwages from the date of dismissal till 1st July, 2005 is concerned, the same may not be awarded to the concerned workman but when the order of reinstatement is passed, some further additional punishment be imposed.

6) Considering the fact that the order of dismissal is of April, 1998 and the approval application came to be submitted in the year 1998 which came to be dismissed in the year 2005 i.e after period of seven years and the again if the matter is to be remanded to the Labour Court allowing the petitioner to prove the charge before the Labour Court, again it will consume more time and the same would not be just and proper after seven years. Therefore, considering the consensus between the learned advocates for the parties, this Court has itself considered the question of imposition of punishment on the respondent workman. Considering the fact that the respondent workman was absent without getting the leave sanctioned for 62 days and considering the explanation given by the respondent workman as he was sick, he could not report for duty and considering the fact that after he has recovered though he has gone there to resume duty but was not allowed to resume the duties, if punishment is imposed of not paying him any backwages

from the date of passing of the order of dismissal till 1st July, 2005 and if further punishment is imposed of withholding of one increment with future effect, will meet the ends of justice in the facts and circumstances of the case. Accordingly, it is ordered that the order of dismissal dated 22.4.1998 is set aside and the petitioner is directed to reinstate the respondent workman immediately. However, the respondent workman will not be entitled to any backwages from the date of dismissal till 1st July, 2005 and it is further ordered that there will be further punishment of withholding of one increment with future effect.

Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

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